

## FREEDOM OF THE PRESS AND NATIONALITY PAPERS IN THE SECOND HALF OF THE NINETEENTH CENTURY IN HUNGARY<sup>1</sup>

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In the Monarchy — even in Historical Hungary — the compromise between the leading circles of the two strongest nations was received by considerable political forces and wide social strata with undisguised opposition or at least heedful mistrust. Already at the very beginning, the Hungarian soldiers of the Revolution of 1848–49, the landless peasants and the peasant masses with a few acres did not hesitate to show dissatisfaction with Dualism, whilst the Nationalities of the Empire expectingly watched when and what kind of formula would be created by the new lords of the multinational East-Central European Empire for the mitigation of tension among the nationalities.

Though in Zagreb, Novisad and Upper Northern Hungary as well as in Transsylvania it was evident that the political rights of other nationalities, representing the majority of the population were “only respected subordinately”<sup>2</sup> by the sanctioned “Common Affair” law with the Austro-Hungarian compromise, still, precisely because the order of 1867. XII. act., that constituted the compromise in Hungary, did not take notice of the nationality problem, it induced in Croatian, Slovakian, Rumanian and Serbian “Hungarophile” political factors the hope that the nationality problems and rights can not be regulated without them or at their expense.

Detailed plans of the Union with Transsylvania, events related to Hungarian-Croatian negotiations as well as the preliminary debates on the nationality bill made it clear that in the eastern part of the Monarchy a federation, a national political independence, or collective nationality rights would not be reached, but instead, the solution of nationality problems will only mean free parlance guaranteed by personal freedom and cultural rights.

In the first year the attitude of nationality leaders was truly reflected by domestic non-Hungarian press. And though the dualistic system was criticized by the papers of non-Hungarian languages too, their more moderate tone, as compared to Hungarian organs of the opposition, did not give reason for official intervention. Only occasionally happened that some organs of the nationality press attracted the press-control's attention,

but this was not a reason to start the mechanism of prosecution. As an example the first Rumanian comic paper (*Gura Satului*) of this period can be mentioned: its "critical direction" was recorded by the Minister for internal Affairs and he proposed a proceeding, but this instruction was proven abortive by the Press Department of the Prime Minister's Office with the conclusion that "the comic paper did not attack the regime but some Rumanian members of the Parliament so the members can only privately raise a claim against the paper".<sup>3</sup>

A sentence of the March<sup>4</sup> 1868 issue of the paper "*Gura Satului*", in which the union of Hungary-Transsylvania is designated as an "illegitimate bastard" reached the Director for Royal Affairs, the press prosecuting magistrate of that time "for consideration and possible utilization".<sup>5</sup> However the public prosecutor did not even take legal proceedings against the Rumanian paper.

The list of articles that allured to be cited before jury, but did not give rise to press-action can be continued with the report published in the paper "*Zasztava*", No. 109 (1867), which demanding uniform freedom for every Slavonian nation, established prophetically: "Perhaps soon the time will come when our nation will get rid of the yoke, because we have been slaves for a long time, slaves of the reigning families, who did not treat us humanly but tyrannized over us with the greatest self-complacency and absolutism."<sup>6</sup>

When commenting on certain harsher lines of the Serbian paper of great effect — behind the scenes — Károly Ráth, as director of Royal Affairs, cautiously remarked that „some terms of the paper seem to contain high treason”.<sup>7</sup>

All this was however, not, enough for prosecution, since a greater danger was represented by the Hungarian "exaggerating articles" circulated in the land. So to minimize the undesirable intemperances of the press the punitive administration acted against the papers of Hungarian opposition first, and the actions against nationality organs were postponed until later.

### 1. The First Nationality Libel Cases in Hungary After the Compromise

The compromise of Austrian and Hungarian ruling circles in 1867 effectuated the dividing of power at the cost of other ethnic groups of the multinational state. This situation already contained those internal contained contradictions of the Middle-European Empire that were to come to light only later.

The nationality leaders of the Austro-Hungarian Monarchy — after the passive, wait-and-see policy which was characteristic of the first years — soon began to attack the vulnerable spots of the heterogenous solution of the nationality problem.

In this study it is not our aim to present the nationality policy of the Hungarian dualistic state, therefore the laws regarding "detailed regula-



tion of the confederation between Hungary and Transsylvania" and regarding the "equality of nationality status" will not be examined, neither will the domestic, non-Hungarian press reaction of the nationality policy be analyzed.

Still, before collecting the nationality libel cases of the years after the compromise, it is advisable to refer to the fact that the home nationalities were inflamed precisely by these "legislation objects" and that later on it was on account of these bills that the sound of criticism of the non-Hungarian organs was growing even louder.

The nationality policy of the Government of Pest first and most severely was attacked by the Rumanian paper "Federatiunea". The government was accused of disfranchisement of non-Hungarian population and was fulminated against because of the union between Hungary and Transsylvania too.

Characterizing the articles addressed to the Rumanians living in Transsylvania the Minister of Justice concluded that "the political unity of the Hungarian nation... as well as the integrity of the land were attacked by these papers" and he added that "the government requires firmness and severity."<sup>8</sup>

As a mark of "firmness" and "severity" in the Cabinet's session on March 31 of 1868 in accordance with the impeachment of the public prosecutor for press affairs<sup>9</sup> the members found that in the issues published on February 26 and in March: "in some articles without signature, under pretext of Rumanian nationality, an incitement to disorganization of the unity of territories belonging to the Hungarian Royal Crown, moreover rebelliousness against higher authorities" is involved.<sup>10</sup>

After the "careful criticism" of the Rumanian paper at the peak of the executive power it was found that the courtroom could not be avoided by the editor Sándor Román.<sup>11</sup> To confirm his position the prosecutor was in search of further injustices and he concluded that in No. 38 of the paper, under the title "Romainii in Dualismu" a legal ground is arisen from "an article of more definite direction".<sup>12</sup>

After the detailed preliminary actions of examination of the magistrate and the public prosecutor, on the 10th December of 1868 Sándor Román was brought before the "free court" of the citizens of Pest.

In the session the Director for Royal Affairs emphasized that the following announcements of the articles under consideration are contrary to the law: "the Transylvanian members of Parliament may not be recognized by Transsylvania or by Rumanians as their representatives" and "the Hungarian Parliament is not recognized because it is incompatible with the laws of Transsylvania".<sup>13</sup> Mr. Ráth criticized in particular the 11th and 12th sections of the article in question, which turned to the reader with an imperative sentence: "You all know and feel the danger awaiting you. Therefore don't delay expressing your obligations towards yourselves, your descendants, God and the country."<sup>14</sup>

Regarding these lines the Prosecuting Magistrate established that "the unity of Hungarian State is attacked by these words and they provoke



the dissolving of the state as well as the reforming of the state constitution using violence and disobedience to higher authorities".

In its verdict the Jury of the Citizens of Pest-Buda did not share the prosecutor's opinion and in the nationality libel case with their votes of 6 to 6 yielding acquittal they documented that they do not always compete for the role of a willing tool in the press criminal law policy of the government. The decision of the jury directed the government's attention to the fact that to announce culpability, publications of more provocative content, as compared to the three articles mentioned above, will be necessary.

The Director for Royal Affairs was not diverted, however, by the failure of the first nationality libel case from the purpose of subduing the Rumanian paper. The series of articles containing the decisions and claims of the Rumanian Intellectual meeting in Balázsfalva<sup>15</sup> was given as a reason for a second attempt of taking measures. According to Mr. Ráth in the document it was noted that: "the Diet of Pest can not be considered as authorized to judge for Transsylvania. . . we take a stand for independent Transsylvania."

On the basis of the aim and attitude of the Rumanian Intellectual's meeting it was emphasized that "since under these circumstances the only way for asserting our political conviction, is to publish them, we confine ourselves to publishing these facts, thus performing our civil obligation and simultaneously serving the government by disclosing the unrest which is connected with the Transylvanian case."

However, the Hungarian government did not need the service of the authors of the proclamation and a criminal action was brought against them.

"Fedetartiunea" showed indignance against the planned sanction in its No. 126 first. The whole text of the "Pronunciamento" and, in addition, signatures were published that guaranteed assistance to the authors of the decision of Balázsfalva. And though the investigation was cancelled at the "clemency" of the emperor and, therefore, the sanction of the intellectuals' group was postponed too, the libel case continued on account of the espousal of the group and the accepting of a Romanophile article of a Viennese paper.<sup>16</sup>

During the second suit of the paper "Federatinuea" in the spring 1869 Mr. Ráth blamed the editor Sándor Román, for "having granted a possibility for inciting third persons in his paper" and in No. 126 of the paper with his Editor's Note following the "Pronunciamento", having personally backed up the proclamation by stating that "this proclamation contains just claims of the Rumanian nation and according to the rights and justice this activity must not be punished."<sup>17</sup>

In the session, the behaviour of the attorney urging a penalty uncovered that — like in the earlier case — he did not have sufficient arguments to substantiate the impeachment. Thus to elicit sentence the only possible way was to affect the feelings of the men in the jury with flowers of rhetoric. "You can not overlook the dangers — Mr. Ráth said at the stand of lay magistracy — that are impending our home and the society.



But these dangers constitute imperative necessity for public peace and silence when the essential laws of the land are trampled underfoot as well as the nationalities irritated against the sanctioned laws are agitated and incited constantly.

The jury's decision that established culpability demonstrated that the indictment appealing to patriotic feelings achieved the desired purpose. The verdict "guilty" delivered in the ratio of 7 to 5 meant a confinement of 1 year and a fine of 500 Forints for Sándor Román. However, the standpoint of the jury regarding the Pronouncement of Balázsfalva indicated also that the Court of Citizens has not the sufficient force to reject the repeated charges although this court can not be considered as an allied group of the government and Prosecuting Magistrate in the campaigns against the press.

After the example set in Román's case the Prosecuting Magistrate of Pest could turn with strengthened self-confidence against other non-Hungarian organs criticizing the nationality policy.

The libel cases against the nationality papers were continued with citing Slovakian papers before law although in general the sharp, offensive tone of the Rumanian and Serbian organs were not followed by Slovakian journalism.

All this however did not prevent the Director of Royal Affairs from taking steps against the paper "Narodni Hlasnik" because of the article entitled "Kalina and Malina" which was published in the February 25, 1869 issue.

This article criticized the provisions of nationality law, it accused the right-wing of the Parliament and the government moreover "Hungarian and non-Hungarian citizens of the land because of treason of rights of the Slovakian nation"; according to the author of this article, on the Slovakian nation was imposed an "excessive tax" and "the youth was led to war."<sup>18</sup>

On the basis of the session held in the summer of 1869, because of the pressure of critical public opinion, — in spite of the prosecutor's attempt<sup>19</sup> — the editor Miklós István Ferencsik was acquitted in the ratio of 8 to 4 from the impeachment of disturbing public peace and silence. The Verdict of the Citizens of Pest indicated that the jury had only vague ideas about the criminal concepts of "incitement" and "instigation" and that to the infliction of the punishments determined by the press-law more provocative reflections would be needed than the article entitled "Kalina and Malina" had.

In the article entitled "What does history teach us?" (in the issue published on January 23, 1869) the readers of "Pest-budinsky Vedomosti" and the Director for Royal Affairs were confronted with more provocative ideas. A publication written by an evengelic churchman József Hurbán analysed the Nationality Law just accepted and sanctioned, and established that "if not wanting to commit suicide, the Slovak nation must not speculate anymore, but has to shake off this bridle".<sup>20</sup>

The article far from being moderate, definitely expressed the end of its reasoning: "With our exclamations we wanted to apprise them that the



survivors will remember that the Abel's blood of the Slovak brother cries for vengeance against the murderous Hungarian nation."

About the essay recalling the idea of revenge, the prosecuting magistrate Ede Szeffert explained in October, 1869 before the jury: "the article in question is neither a discussion nor a criticism but is really an instigation". . . it attempts to induce aggressive disturbances."<sup>21</sup>

In agreement with the opinion of the public prosecutor, in the ratio of 8 to 4 most lay judges found that the article "making the nationality law subject of hate", realized the delict of "an instigation for aggressive disturbance of public peace" and therefore criminal sanction could be claimed against it."<sup>22</sup>

Note that neither this penalty nor earlier judgments had a significant effect on the nationality press. The organs of the press-supervision could not observe considerable change even in those papers that have been sentenced before.

The failure of the preventive penalties was indicated also by the unchanged program and tone of the paper *Federatiunea*. The demand of a total national autonomy was not modified by the editor who succeeded Sándor Román.

What is more, in No. 112 of 1869, or rather in its "editorial article" the paper depicted not only the nationality grievances but threw light directly on contradictions of the social system so the paper earned an even worse reputation.

This writing, published on 13 October, actually commented a telegram from Transsylvania which informed laconically the readers of the fact that "Baron Apor depossessed the inhabitants of Tótfalva, a Rumanian village, as he did once with his serfs, the people were cast out of the estate by court, as a result of which since 8 days 26 families of 300 souls have been exposed to the rigour of weather. Their land and crop of the year were made subject to auction and all their properties were distrained."<sup>23</sup>

To this brief message the editor added his own words: "The content of this telegram is a frightful and saddening document on the culmination of absolutism and anarchy in Transsylvania, moreover, it calls attention to the fact that the situation of this unfortunate principality is no longer tolerable and that if the oppression is continued by the Hungarian aristocrats, then there is nothing left for the Rumanians but to cry "pro ara et focus".

The dramatic analysis of the situation turned into a sinister threat in the final lines of the comment: "Continue your way you lords, and you will see what this will lead to. You heartless men will see what the desperation of a people is capable of doing. . . we can not turn to anyone but ourselves."<sup>24</sup>

The press supervision magistrate summoned the Prosecuting Magistrate in a quick advice to institute an action.<sup>25</sup> After the successful settling of the investigation, on the first days of 1870 the documents of the case already laid on the desk of the jury in the capital. According to the contemporary press, the jury accepted the reasoning of the vice-director János Szabó. They were inclined to discover in the words "written on the case of



Tótfalva that they agitated partly against the Parliament and partly against the government".<sup>26</sup>

With the condemning sentence of the lay judges, however, the third libel case of the paper "Federatiunea" was not closed. Porucz's, the Editor's case was transmitted to the jury of Nagyszombat by the Curia accepting the culprit's plea for nullity. The citizens of Nagyszombat, in this case more liberal than their fellows in the capital, acquitted the editor and so he did not get imprisoned in Vác.<sup>27</sup> The resolution of the arbitrators of the Upper Hungarian town rejecting condemnation together with the earlier test-cases confirmed that the jury could only be considered as a vacillant and rhapsodic means for the penalty of supposed or true press-delicts.

In the libel cases of Hungarian oppositionist papers the citizens became accustomed to the "non-guilty" verdicts and showed reluctance to restraining the nationality papers. The Director for Royal Affairs overruling the charging of the jury, however, did not renounce to regulate the paper Federatiunea. On account of the coimpertinent remarks of a letter from Bucharest published on the 30th June of 1869, similar to those of the condemned article written by dr. Hurbán, in the hope of the conviction of the editor that time Sándor Román, a punitive sanction was started against the Rumanian paper by the Prosecuting Magistrate for the fourth time.

The Public Prosecutor expected the jury to condemn the writing which — among others — stated: since the enactment of dualism "the Hungarian nation has become. . . an imitator of the vile methods of the Regime of Bach and Schmerling . . . Our spirit does not breath freely any longer . . . the non-Hungarian nationalities see that their language and nationality are being oppressed . . . their nation is ruled by other nations . . . the people feel the effects of the absolutism of the government."<sup>28</sup>

The writer however was not content with the mere presentation of the hardship of Rumanians living in Hungary but as a conclusion he emphasized: "The Rumanians can not consider the events proceeding in Hungary and in Transsylvania disinterestedly: the despotism over a brother, the murdering of a sister can not cause anything else but a feeling for revenge in a brother."

Before the jury, the Deputy Public Prosecutor urging condemnation, discovered in the lines of Sándor Román the intention of "making Dualism hateful" and "incitement against constitutional conditions".

By declaring the letter from Bucharest innocent, the jury elected for the third quarter of 1870 put their votes down for free criticism so that in the libel cases of non-Hungarian papers out of six cases already the fourth was closed with a "non guilty" verdict. In the first two years of the press-proceedings against nationality organs the 66 percent acquittals demonstrated not only the increasing apathy of the jury of Pest towards political actions but convinced the "Procurator General" that some definitions of the press-law especially those of its § 9. — the one utilized most frequently against nationality papers — leave a large field for a different interpretation of the accused articles, as compared to the way the Prosecuting Magistrate explained them.



The Directorate for Royal Affairs, prompted by the objective and subjective obstacles in the way of punishing the oppositionist press, had to take recourse to further paragraphs, beyond the „very obscure” § 9., in order to take legal proceedings against nationality papers. The Prosecuting Magistrate found occasion for the justification of this tactic in the article “Cyrillic letters in the political Herberg of Zagreb” published on the 29th October in the paper *Zasztava* (1869).

In his article the editor, Szvetozár Miletics, criticized one of the decisions of the Croatian Parliament in which the petition of the Catholic inhabitants of Szerém was not even found worthy of consideration because it was written in Cyrillic letters, and the government was ordered to use Roman letters.

The publication stated that because of this decision of the session at Zagreb “the Serbians must revolt as one man against the dictatorial procedure and decision . . . with an unanimous cry.”<sup>29</sup>

The editor prompting opposition openly called upon the villages at Szerém to attack “the session of Zagreb with their protest” as well as he invited “the members elected to step back”, he called for a “freeze of all official village affairs, especially those that were to serve the interest of the state.”

In his desperation over the rejection of Cyrillic letters the editor of the paper “*Zasztava*” did not hide his opinion about the political factors of Croatia. He considered the session in Zagreb as a “lurking-place of fratricide” and in connection with the activity of the governor he established: “Rauch . . . is destroying in Croatia and in Slavonia, he pesters Serbians . . ., he not only tyrannizes the Croatian and Serbian nation but also humiliates them, and he degrades them to political slaves of aristocrats and foreign nations.”

The publication, appealing to Serbian patriotic sentiments, in conclusion summarized things to be done in an imperative tone: “We must concentrate our hate and all the anger of our nation . . . against the Governor Rauch and his toadies. . . against the Regime which rules tyrannically, against the compromise on which the Regime is based and which chokes the morale of independence and national self-reliance.”

In the article directed — under pretext of the protection of Cyrillic letters — against Croatian law-makers, the Governor, and against the whole Regime of Dualism, four sections of the press-law were considered to have been violated by the Prosecuting Magistrate and in the hope of a condemning verdict, legal proceedings, were taken.

On the session held in the summer of 1870, because of rebelliousness against higher authorities, instigation for disturbance of public peace, as well as because of the libel of the Governor’s Office and his private person, the Procurator General proposed to punish Mr. Miletics.<sup>30</sup>

The indictment, prompting criminal sanction, defined the official limits of the freedom of press and emphasized: “To a decree of the Parliament as long as it is in force, every citizen of the country must obey. If however, somebody is not satisfied with it, and considers it harmful for



the land or for some parts of the land, then he has the right to disclose the imperfection or inexpediency of it within limits dictated by good patriotism and with the constitutional means available to gain the majority over for his opinion."<sup>31</sup>

Szvetozar Miletics did not choose this way — said Károly Ráth — and analysing the sentences of the article, established that the one who stimulates for opposition or revolt by way of the press is guilty, of rebelliousness against higher authorities: According to the Public Prosecutor, those also are guilty who stimulate for opposition against the force of arms since "who warrants, that a people raised against the parliament and government in the name of Serbian national pride . . . would not burst into acts of violence?"<sup>32</sup>

The Justification of the charge of calumny directed towards of Novisad became a martyr, still, before the unbiased tribunal of legal history the violation of law can hardly be imputed to it. The jury of Pest in the publication "The Cyrillic letters and the policy Herberg in Zagreb" discovered three press-delicts, thus the nationality politician became an inhabitant of the prison in Vác.<sup>33</sup>

As a result of the sentence of the jury, the former mayor of Novisad became a martyr, still, before the unbiased tribunal of legal history the violation of law can hardly be imputed to it. Mr. Miletics was convicted because of transgressing the limits determined for him by the press-law, the government, as well as the jury.

## 2. The French-Prussian War and the Nationality Press

The greatest test of strength between the nationality press striving for the extension of nationality rights and the government occurred in 1870 when the instability in the European policy shook the Monarchy too, and it was feared that the French-Prussian War would not leave the actual borderlines intact. This opportunity was expected by important political factors in the Monarchy but no agreement, concerning the case of participation in an "international confusion" was formed between them. In foreign policy, however, there was a choice between neutrality or an intervention on behalf of France, and it became, an important task to stabilize the international situation. Only by uniting internal forces and by smoothing political contradictions could Vienna and Pest create the image of being ready for military intervention or repelling one before their supposed or true enemies. In possession of a hypothesis of internal political consolidation Mr. Andrassy proclaimed: "Our nation can array 800 000 men . . . in spite of the opposition and the contradiction among nationalities and religions, Hungary will do everything that the government requires."<sup>34</sup>

And even if the President of the Government was supported by the opposition — for the first time since 1867 — a more loyal, active assistance of the nationalities was difficult to imagine.

At the time of the "European storm" three organs of Pest drew attention to this fact and they established that in case of danger the nations not "coordinated" are ready to leave the Monarchy's sinking vessel."



This was declared for the first time by the Serbian paper "Zasztava" on the 1st of April, 1870 that was before the French-Prussian War, in the article "Austro-Hungary and the Slavonian nations."

The publication concerning the nationality situation emphasized that "Austria can not be named Austria but the real name is Austro-Hungary; this is since the time that Austria and Hungary shares the rule over other nations. The people of the Hungarian Plains and the German nation has allied for the aim of hindering the development of the Slavonic race."<sup>35</sup>

"Seeing the rejection of the national rights of the Slavonics it is not surprising that these nations look for other modes of existence even if the consequence would be the downfall of Austria."<sup>36</sup>

Referring to the military conflict standing on the threshold, the author established openly: "How will the state await the European situation that draws the land into action? — It is not our concern. At this time we can only say that a state among whose nationalities no harmony reigns, is doomed to defeat."

Some months later, after the outbreak of the war but still before the French defeat, an article of "Federatiunea" analysed how much the Monarchy could rely upon Rumanian heroism.

Will the Rumanians fight for and die for the policy of Beust, Andrásy or Deák? This is not a problem for a Rumanian but it is difficult for those who inspire for a war by which the very existence of the Austrian Empire would be decided."<sup>37</sup>

The organs of Rumanians in Pest made disinterested statements only on the destiny of the Austro-Hungarian Monarchy. In the issue of the 21st August the writing entitled "Pest 19/7 August 1870" showed solicitude for Rumanians. This article gave political advice to Wallachia and Moldavia, it called attention to the danger from the West that is from the Monarchy: "Rumania must be ready for the danger in every moment."<sup>38</sup>

The publications cited from Zasztava and from Federatiunea convinced the foreign readers that the land is not homogenous in thinking of the war.

The writing published in the Slovakian oppositionist paper (Slovenske Noviny) or rather the article "An old building of Europe tumbles down" supported this feeling. In addition, it pointed to the political lethargy shown by the non-Hungarian nations as well.

Knowing the result of this international strife and assuming the expected French defeat, this article established "at the forming of the new empires the nationality will be a basis . . . the existence of the Austro-Hungarian empire is contrary to this principle . . . Hungary makes a disguise of the constitutional situation which is considered a torturing tool for other nations so that Hungary is worth to become a geographic term only for these nations looking indifferently at its collapse."

The article depicted the danger of genocide to the reader and said: "from the river Tisza up to the Black Sea the Daco-Rumanian Empire will be developing more and more . . . in Transdanubia the South-Slavonian Federation will revived; the territory between the Tisza and Morava rivers



and the Carpathian Mountains are to get in the hands of the Slovak nation by divinity and by the whole of Europe: in this way these nations cry with jubilation that the old building of Europe is tumbling and we answer: Amen".<sup>39</sup>

The publications inspired by the international political changes which formed part of the presspropaganda for the liberalization of the nationality law accepted in 1868, served one purpose: by the vivid depiction of the danger of war to have the government widen the rights of the "discontented inhabitants".

But this tactic hit back like a boomerang. The three organs experimenting with new tactics were brought to a libel case and the authors were summoned before jury.

In November 1870 János Porucz before the jury in vain emphasized that the writing published on the 5th August was addressed not to the Rumanian people but to the Government for edification. Porucz was found guilty in the proportion of 7 to 5 and because he instigated the Rumanians to refuse their obligations in the protection of the common homeland.<sup>40</sup>

After the session held on the 29th November the lay judges of Pest could meet again the condemned editor of *Federatiunea* because of his "warnings" published on 21th August. These "warnings" bring a definite attitude against the Austro-Hungarian Monarchy and advises that foreign armed people should be hired to upset the public peace of the land.<sup>41</sup>

The jury that recently voted for "guilty" now said "no". Beyond doubt, they were content with the single penalty.<sup>42</sup>

In the case of József Hlozsánszky the prophered of the collapse of Europe, 10 months imprisonment and 500 Forints penalty were inflicted.<sup>43</sup>

After the cool reception of the nationality articles published in a war-like atmosphere the author of the article of *Zasztava*, Milán Gyorgyevics, expected that the Directorate for Royal Affairs will not enter into a doubtful business.<sup>44</sup>

The Prosecuting Magistrate, however belied these expectations and one and a half years later he was brought to trial.

In the session held on 27th October of 1871 the author was not found guilty in the delict of incitement against the Crown and disturbance of public peace,<sup>45</sup> the charge brought by the Public Prosecutor.

The modified political situation, the solution of the conflict between France and Prussia in the autumn of 1871 bereft the Prosecuting Magistrate from earlier arguments, that is to say from the means of frightening with the danger of war. Seeing no more, than failed predictions and unrealistic visions in the article, the majority of citizens gave their votes to acquittal.<sup>46</sup>

The acquittal of the lay judges was first of all a failure of the persecutors of press delicts, but an important prestigeloss hit the nationality policy of the government too.

The members of the jury with this acquittal not only denied the ground of the charge but at the same time they subscribed to the reply of the prisoner and his defender namely to the reasoning that compelled the nationality policy itself in the position of the culprit. Before the jury Mánil



Gyorgyevics said that the nationality law did not give satisfaction to the citizens of Hungary and he rejected the persecution of articles containing declarations of dissatisfaction. — "Instead of rejecting our claims by reasons, instead of discovering the impracticability thereof and instead of meeting them — if they are just — hereby acting for public peace, they oppressed free thinking."<sup>47</sup>

By the absolution of Milán Gyorgyevics the court of Pest also demonstrated in the spirit of "liberalist truth"<sup>48</sup> that the limits for the freedom of press are determined not by the Prosecuting Magistrate dependent on the government, but by an independent jury.

### 3. The low tide of Libel Cases

After the disappearance of the storm-clouds from above Europe the nationality leaders were deprived of the hope of the destruction of the multinational Monarchy. The politicians of non-Hungarian nations could not expect the situation of their brothers to improve. In the seventies it became clear more and more that the Hungarian leading circles will not do much for the improvement of the nationality law ectorted by the Deák-Eötvös group.<sup>49</sup>

The growing inactivity of disillusioned nationality leaders and the softening of the tone of Hungarian papers made the political amphitheatre more monotone and the sessions of the jury became more sporadic too.

The nationality organs learnt to criticize diplomatically and to say their contrary opinion between the lines. More refined methods for expressing opposition were mastered by the majority of these papers so that the apparatus persecuting press delicts was given an insoluble task. The careful but openly oppositionist attitude was best represented by the paper "Siebenbürgisch-Deutsches Tagesblatt" in which "anti-Hungarian" characteristics did not lead to an open attack against the "Hungarian state and the unity of the state" instead the articles published discussed the public with masterfully shrouded but provocative sarcasm."

In this way the "Prosecutor General" of Marosvásárhely observing the effect and political direction of the Saxon paper stated that the propaganda of the "Tagesblatt" by means of a "libel case" could not be retorted, due to the Austrian criminal code being in force in Transsylvania and to the "undeveloped institution of the juries."<sup>50</sup>

The attitude and tactic of the German organ of Nagyszeben became well-known and something of an exemplar to of her non-Hungarian papers.

As the sources of National Archives testify, publications that were contrary to the law were only rarely found by the press-department or the Cabinet. Even if some papers were brought before court because of their criticisms of Dualism, the editors usually was not condemned, because the prosecutor "did not believe that the possible sentence actually would have the suitable effect." In the year 1872, concerning the paper "Gura Satului" the Cabinet's decision asserted: "this article openly incites against the



Monarchy for Republican ideas. . . therefore "a libel case is to be started by the Prosecutor General."<sup>51</sup>

The Prosecuting Magistrate however, did not agree with the instructions of the Cabinet, and in a reasoning worthy of a politician the decision was weakened.

In his reply Sándor Kozma established that "the content of the Rumanian article is a heap of trivialities formulated in bad republican jargon." The Prosecuting Magistrate charged the author merely with "illiteracy" and stated that "even there, where the freedom of the press is much more limited than it is in our country, determined by the 18<sup>th</sup> act of the laws of 1848 they stopped starting libel cases in the case of mere illiteracy of this kind. They have got convinced that the persecution of these nonsenses only increases their significance and despoils them of that clownishness which is recognized in them by intelligent people."

The reply beyond, discovering the political implications of a possible retorsion, regarded the case as being risky even from the legal point of view. Mr. Kozma established with flat objectivity that "in the press-law there is no support for describing the points contained in the article as a press delict . . . because the article is a discussion and is not contrary to the press-law."<sup>52</sup>

Its "clownishness" and the lack of legal basis saved the paper from action. The article entitled "Letter from Pest" published in No. 31 of 1873 (Federatiunea) is a good example for the fact that in the seventies the delict was not necessarily followed by a jury's session.

The prosecutor who analysed the article denounced by the citizens of Karánsebes established: "The 'Letter from Pest' contains some elements which are considered press-delicts according to section 9 of the 18th act. of 1848 but its comments are superficial, its tone is negligent and its size is so small that the mobilization of the press-proceedings apparatus would not be proportional to the significance of the article."<sup>53</sup>

The official analysis of the "Letter from Pest" is characteristic of the careful attitude of the Prosecuting Magistrate in the libel cases, which accompanied by the now more politic style of the nationality papers left the jury almost without work.<sup>54</sup>

The more loyal tone of the non-Hungarian papers and the legitim criticism of the Regime however were only a trend.

The last years of the period examined were not completely free of libel cases.

The article published in the Rumanian paper, Albina on the 4th September of 1873 under the title "To the Rumanian soldiers who serve at the borders", was brought to suit due to true reasons.

This message considers Hungarians as rebels and establishes with emotion: "With what noble pride you can look down from the height of your morality and of your fidelity to our most most majestic Emperor at these immoral and treasonable people. The Hungarian Government in agreement with the Hungarian nation attempts to deceive you with sweet words and wants to destroy you . . . The Hungarians or rather the Hunga-



rian Government ridicule and hate you. . . Do not believe the pledges of their Government!"<sup>55</sup>

The legal proceedings against the paper "Albina" were completed with the conviction of the lawyer Luiba Gruja who admitted the authorship.<sup>56</sup>

As it was also with the prosecutor's triumph that the last libel case before the fusion, condemning György Petrovics (January 16, 1874, Zásztawa), ended.<sup>57</sup>

The purpose of the verdict against the two nationality papers, however was different from that of the program against non-Hungarian organs earlier. With the imprisonment of Luiba Gruja and György Petrovics the Government wanted to avenge those articles which contained "the most odious delicts and abuses" . . . "which insinuated Hungary before foreign nations."<sup>58</sup>

#### 4. The balance of Court Judgements

With the review of the libel cases of nationality papers attacking the Government in Pest our purpose was to discuss the limits of the freedom of the press drawn by criminal law, and in addition, to examine the delicts of the critical papers and the court practices concerned. Through the presentation of the sessions we wanted to answer the question of how the Press Law of March and the rules of legal proceedings served the purposes of checking the non-Hungarian papers.

As a result, the picture of "the state of siege of the press" can hardly be verified from the 28 political libel cases examined. During 9 years there were less than 30 cases, already this number shows that this would be quite a difficult task. We must agree with the opinion of the Examining Magistrate Nádor Kacziány, who in 1869 emphasized that "relative to the hot political situation" the cases started by public prosecutors are very few.<sup>59</sup> So the contemporary reports can be accepted only with a certain reservation.<sup>60</sup>

The comments concerning the persecution of the nationality press of later years are of scant significance. Due to the relative rarity of suits, the frequent acquittals and the total sum of penalties, it is reasonable to correct the all-sweeping conclusions regarding the six decades of Dualism.<sup>61</sup>

Out of 15 libel cases against nationality papers seven cases were completed with acquittal in the first decade of Dualism.

In the eastern part of the Monarchy the frequency of the verdict "salvus conductus" for papers of non-Hungarian languages suggested that only the editors and authors of roughly libellious organs were punished in general.

Note that the penalties inflicted were not too severe either. Despite the statistics dated 3-4 decades later, the sum of imprisonment inflicted to the sentenced editors amounts to 7 1/2 years.<sup>62</sup>

With the mention of frequent acquittals and the light character of penalties, however, we do not have the ambition to point an ideal picture about the freedom of the press. As already stated the Government of Pest was



not unbiased against the nationality papers. This is supported by the fact that while because of anti Hungarian articles of non-Hungarian papers their editors were in libel cases quite frequently, the Prosecuting Magistrate did not act against Hungarian organs attacking the nationalities.<sup>63</sup>

The Hungarian oppositionist press was not always treated with objectivity either. In the first ten years of Dualism the juries corrected the criminal law-policy by the acquittals of the authors and editors.

Seeing this phenomenon the independence of the jury was accepted by the Prosecuting Magistrate<sup>64</sup> and with referring to the unreability of the lay judges it frequently withstood the Press Department or the claims of the Ministry of Interior Affairs.

The members of the Government of Pest accepted the practice instituted by the Prosecuting Magistrate and "instead of strict laws and even more strict courts"<sup>65</sup> they gave up trying to rule the press by means of criminal law. The first half of the seventies thus became — a period of freedom of the press indicating to what extent the Regime of Dualism could "practice liberalism without risking its own existence."<sup>66</sup>

#### ANNOTATION

<sup>1</sup> On the political stage of East-Central-European nationality movements and ambitions began to play a more important role in — especially the 2nd half of — the 19th century. Within Hungarian literature many monographs devoted attention to the nationality problem of the multi-national Monarchy, and admitted the fact that this problem remained unsolved, and led to the disintegration of historical Hungary. This study, that is a chapter of a monograph published in the recent past, does not aim at analysing the nationality problem or policy, even less does it aim at contradicting to the historical literature of Hungary of the neighbouring nations. Here the modest aim, dictated by limited time and space, is to objectively demonstrate the life of the non-Hungarian, nationality press among the Carpatians, the freedom and limitations of these, after the Austro-Hungarian compromise in 1867.

<sup>2</sup> History of Hungary IV. (University textbook) edited by Péter Hanák, Budapest, 1972. p. 134.

<sup>3</sup> National Archive Budapest (henceforth abbreviated as N. A. K. 26. Me. ref. No. 1868/309.

<sup>4</sup> Ibid.

<sup>5</sup> N.A., K. 26. Me. ref. No. 1868/24.

<sup>6</sup> Ibid.

<sup>7</sup> Commenting on the change of voice of the nationality press before the plenum of the Parliament, the leader of the juridical authorities remarked personally: „the number of inciting articles appearing in the papers published in foreign languages has increased in the past and if the government does not take strict and effective measures against this, and if these measures are not backed fully by legislation, then I will have to announce in the name of the government, that we cannot guarantee responsibility for public peace.“

Cited from: Presswork of the Parliamentary Session that took place on the 20th. April, 1869. Diary of the House of Representatives.

<sup>8</sup> The impeachment emphasized, that the phrases from Nos. 25. and 28. 1868 of *Federatiunea* that stated: "the representatives of Transylvania won their assignement due to invalid election-laws" so "they cannot rightfully represent either Transylvania or Rumanians living there . . . are certainly such agitations, that aim to hinder the governing and to make the orders by law impossible to carry out." N.A., K. 26. Me. ref. No. 1868/268., 1018.

<sup>9</sup> Ibid. K. 27. MT. JKV. 1868. III. 31. 12./MT. sz.

<sup>10</sup> On the 1st. April 1868, the generally well informed *Pesti Napló* gave the news that "the paper *Federatiunea*, which clearly states that it does not recognize the Union with



Transsylvania nor the Hungarian Parliament . . . has been made subject of a libel case." Diary of Pest (abbreviated as D.P.) 1868. IV. 1.

<sup>11</sup> N.A., K. 26. Me. ref. No. 1868/414.

<sup>12</sup> "The Parliament in Pest need not bring any decisions about the independence or autonomy, or of the national rights of Transylvania . . . we do not recognize the validity of the aristocratic statues . . . and we will keep to this point of view until we live even if we will all break under the oppression." Budapesti Közlöny (abbreviated B.G.) 1868, No. 285. 11. December, p. 2802.

<sup>13</sup> Ibid.

<sup>14</sup> N.A. K. 26. Me. ref. No. 414.

III./1868. "Account for the Investigating Judge on the Libel Cases of the Period Ist. October 1868 to 31st. December 1868. 17594/868. On the 4th. December, to the Public Prosecutor, about the case against Sándor Román for the publication of Pronunciamento in Federatiunea . . . the documents were transferred to the Public Prosecutor on the 22nd. December."

<sup>15</sup> In No. 133 in 1868 of the paper Federatiunea, the article of the Viennese paper "Der Osten", entitled "Die Rumänien in Ungarn und Siebenbürgen" was accompanied by warm words, since this article "agrees to and encourages the Rumanian movements in Hungary and Transylvania in general . . . is glad to hear about the demonstration at Balázsfalva . . .". Károly Ráth's letter emphasized that "This article, that was inciting and was full of the most hateful accusations against the Hungarian nation, was accompanied by the lines of Sándor Román in which he stated that he is pleased that the friends of Rumanians not only recognize the rightfulness of the demands of the Rumanians, but they also collaborate in the fulfillment of these." B.G., 20.03.1869.

<sup>16</sup> Ibid, p. 816-817.

<sup>17</sup> Ibid, p. 818.: "Highly honoured jury! If considering both the content and the frequency of these declarations and the number of people who signed them, there should be no doubt that the aim of these was an open and systematic demonstration against the legitimate superiority."

Ibid, 21.03. 1869.

<sup>18</sup> B.G., 15th. August, 1869.

<sup>19</sup> The prosecutor, listing the offences of the Narodni Hlasnik, emphasized: "clear lies were put together with falsities and . . . the government, the majority of the Parliament, what is more, the whole Hungarian nation was shown to be the oppressor of the Slovakian nation."

<sup>20</sup> B.G., 23rd. October, 1869. No. 243. p. 3585.

<sup>21</sup> Ibid.

<sup>22</sup> B.G. 22nd. October, 1869, No. 242. p. 3585.

Due to the offending editorial, Hurbán was sentenced to 6 months of confinement and had to pay a fine of 200 Forints.

<sup>23</sup> B.G. 23rd. January, No. 18., p. 342.

<sup>24</sup> "... we were deprived of our language, our nationality, our autonomy, the next step will be that we will be deprived of the property of the land. . ."

<sup>25</sup> N.A., K. 26. Me. ref. No. 1869/2179.

<sup>26</sup> B.G., 23rd. January 1870.

Most of the members of the Jury of Pest must have been uncertain about the judgement of the article, since the verdict "guilty" was announced only in the rate of 7 to 5. The uncertain stand of the lay jury induced a surprisingly moderate verdict from the professional Court: 6 months confinement and a fine of 200 Forints.

<sup>27</sup> N.A. ref. No. K 628. Temporary Royal Court, Nagyszombat. 1869/2.

<sup>28</sup> B.G., 20th. July, 1870.

<sup>29</sup> B.G., 24th. August, 1870.

<sup>30</sup> Diary of Pest, 24th. August, 1870.

<sup>31</sup> B.G., 24th. August, 1870.

<sup>32</sup> B.G., 25th. August, 1870.

<sup>33</sup> The professional Court sentenced the accused to one year confinement and a fine of 500 Forints. 24th. August, 1870.

<sup>34</sup> István Diószegi: Austro-Hungary and the French-Prussian War 1870-1871, Budapest, 1965, p. 8.



<sup>35</sup> B.G., 27th. October, 1871.

<sup>36</sup> B.G., 28th. October, 1871.

<sup>37</sup> B.G., 30th. November, 1871, No. 274. p. 8178. "Here the question arises, whether when looking at the Rumanians, do we speak only of Rumanians because we are Rumanians, and what would be a reason for which we would sacrifice our blood and against whom would this be directed?"

<sup>38</sup> B.G., 8th. December, 1870.

<sup>39</sup> B.G., 14th. December, 1870.

<sup>40</sup> B.G., 30th. November, 1870.

Bertalan Rozgonyi, Deputy Public Prosecutor, blamed Porucz for having encouraged racism and attacked fraternity when in the whole "our press literature was ruled by a moderate tone induced by our patriotism... and even postponed the discussion of questions that would deal with our internal affairs."

The editor was sentenced to 10 months confinement and a fine of 500 Forints by the professional Court.

<sup>41</sup> B.G., 10th. December 1870.

<sup>42</sup> B.G., The jury's vote was against the indictment in the rate of 7 to 5.

<sup>43</sup> B.G., 14th. December, 1870.

Ede Makovecz accused the journalist on the one hand having incited for the disintegration of the "perfect state union" of the Monarchy, on the other hand for having incited against the legitimate superiority by having encouraged the "citizens of non-Hungarian language not to live up to their obligations determined by law."

The journalist was found guilty of only the second accusation, namely for having "incited against the legitimate superiority."

<sup>44</sup> It could be that, since the Prosecuting Magistrate only thought of revenge one year after the publication of the article, the memories of earlier "almost-sentences" were diminished in the memories of the people of the Directorate for Royal affairs.

N.A., 26. Me. ref. No. 1871/117.

<sup>45</sup> B.G., 28th. October, 1871.

<sup>46</sup> The reception of the accusation of the press by the jury does not only prove the fact that the lay court was unbiassed but also that a late indictment can considerably lose power.

<sup>47</sup> In his answer to the charge, Milan Gyorgyevics stated: "A representative from the Hungarian House of Representatives said on one of the sessions of the House that the views in the accused article are common among the nationalities and the representatives are elected with respect to this."

The Defense stated in a summary-like manner that "the content of the article is nothing but the analysis of the discontent of the Slavonic nations and the dangers arising from this."

B.G., 28th. October, 1871.

<sup>48</sup> "I am not asking for pity nor do I plead forgiving, I only plead for liberal truth" - remarked solicitor Friedmann.

Ibid, 29th. October, 1871. No. 249. p. 5471.

<sup>49</sup> B.G., 27th October, 1871.

The majority of Deák's followers did not even feel the necessity for a reform of nationality laws. Their self-satisfaction about the liberality of this law is shown clearly in the indictment that was presented in the case against Milan Gyorgyevics: "The Hungarian nation calls other nations living under the crown of Stephen I. her brothers and would share the blessings of the free Constitution with open honesty."

<sup>50</sup> N.A., ref. No. K. 148. B.M. eln. 1874/410.

<sup>51</sup> N.A., ref. No. K. 27 MT; Jkv. 12th. November, 1872, 88/MT. sz.

<sup>52</sup> N.A., K. 26. Me. ref. No. 1872/2133

The content of the article backed up Kozma's point of view fully "You, as a republican, say, that the cause of all this is the perjury of modern tyrants who are called rulers today; but your efforts are all in vain: if the rulers would not use and exploit the nations, if they would not insult and abuse them, how would they have castles and battlements built and how would they keep the nations in the shackles of tyranny... their Honours think that they are of finer material than other mortals on this earth, that is why they so much despise Darwin, who placed them in the same line with apes and other animals."

<sup>53</sup> N.A., K. 26. Me. ref. No. 1873/1540.



<sup>54</sup> N.A., ref. No. K. 27. MT. JKV. 19th. January, 1873, 33/MT. sz. Remark: The Cabinet of Ministers accepted the point of view of the Deputy-Attorney General.

<sup>55</sup> B.G., 17th April, 1874.

<sup>56</sup> The solicitor was sentenced to 15 months of confinement and a fine of 500 Forints.

We remark that the abuse of § 9. of the press-law could be proven only by far-fetched interpretation of the lines addressed to the "Rumanian soldiers serving at the borders", thus it is possible that the jury could have been mistaken instating that the article was inciting. However the words characterising the work of the Parliament of Pest did not only violate the rules of the style of protocoll but also gave reason for condemning according to § 10. of the press-law.

<sup>57</sup> D.P. No. 180. 7th. August, 1874.

Petrovics was found guilty in a proportion of 9 to 3 because of his article that "insulted the the Hungarian nation, the state and the government". He was sentenced to 8 months of confinement and a fine of 300 Forints.

<sup>58</sup> N.A., ref. No. K. 26. Me. 1874/205., 254.

<sup>59</sup> Jogtudományi Közlöny 1869, p. 287.

<sup>60</sup> Magyar Újság 1st. July, 1868.

<sup>61</sup> Vasil Goldis: Testamentum, Bucurest, 1976, p. 134.

<sup>62</sup> Vasil Goldis; *ibid*, p. 134., "The nationality press is truly condemned... between 1884 and 1894, sentences of 59 years and 15 days of imprisonment add 11.840 Crowns fine were charged only in Rumanian incitement-cases. From 6th October 1897 to the 7th. June 1906, 44 years and 149 days imprisonment and a fine of 49 293 Forints, and under the era of the coalition from 22. April 1906 to the 27th. August 1908, 181 years, 3 months and 6 days imprisonment and a fine of 89 087 Crowns were imposed upon the condemned."

<sup>63</sup> István Tombor also called attention to this contradiction on the session of the House of Representatives. At the trial in the immunity-case of Vince Babes he demanded that "if the Director for Royal Affairs acts according to his obligations, he should do this not only in respect to the Rumanian papers but also in respect to the Hungarian ones, since for example the "Reform" publishes slanderous articles against the Croatian nationality and government almost daily..."

B.G. 10th February 1869.

<sup>64</sup> N.A., K. 26. Me. ref. No. 1869/558.

<sup>65</sup> *Ibid*, 1874/23/föv. Főü. 4309/28.03.1874.

<sup>66</sup> Debate about the development of Hungary in the Era of Capitalism, Budapest, 1971, p. 124., Tibor Erényi's speech.